Court No. 2

In the High Court of Uttaranchal at Nainital.

(1)First Appeal From Order No. 760 of 2001.
(Old No. 837 of 1988)

(1) Sarvdaman Singh S/o Jatan Singh,
(2) Gopal Ram S/o Sri Jaigan Ram,
(3)Jatan Singh S/o Sada Ram
All residents of 112 Shyamganj, Bareilly,
at present R/o Choudhary Transport,
Village-& P.O. Lal Kuan, District-Nainital.

.....Appellants/Opp.part Nos.1,2,3.

Vesus

(1)Smt.Subhash Gupta W/o late Ravindra Gupta,
R/o R-5/13,Krishna Nagar, Delhi.

.....Claimant/Respondent

(2)Oriental Fire & General Insurance Company,
Vedi Bhava, Haldwani, District-Nainital.

.....Claimant/Respondent No.8

WITH

(2)First Appeal From Order No. 1515 of 2001.
(Old No. 1074 of 1988)

Oriental Insurance Company Ltd.,
Vedi Bhavan, Haldwani, District-Nainital.

.....Appellant/Opp.part Nos.8

Vesus

(1)Smt.Subhash Gupta W/o late Ravindra Gupta,
R/o R-5/13,Krishna Nagar, Delhi.

.....Claimant/Respondent

(2)Sarvdaman Singh S/o Jatan Singh,
R/o of 112 Shyamganj, Bareilly,
(3)Gopal Ram, R/o of 112 Shyamganj, Bareilly,
(4)Jalon Singh R/o 112 Shyamganj, Bareilly,

.....Respondent/Opp.party Nos. 1,2,3.

Sri Sandeep Tandon, learned counsel for the Claimant.
Sri Pankaj Purohit, learned counsel for Oriental Insurance Co.Ltd.

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Dated: 21st Aug., 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

These appeals have been preferred by the owners of the offending vehicle No. USE 3028 and the Oriental

Insurance Company, with whom the offending vehicle was insured, against the judgment and award dated 12.9.1988 passed by the Motor Accident Claims Tribunal/District Judge, Nainital *(hereinafter referred to as the Tribunal),* in Motor Accident Claim Case No. 67 of 1986.

Brief facts giving rise to the present appeals are that on 09.10.1985 Deepak Gupta was travelling in Bus No. DEP 4674. He was returning from Nainital to Delhi by the said bus after completing the educational tour organized by Directorate of Education, Delhi Administration, Delhi. The motor truck bearing No. USE 3028, which was being driven rashly and negligently, came from opposite direction, hit the rear right side of the bus when the bus was approaching the town of Rudrapur. Deepak Gupta, who was sitting on the rear right side of the bus, sustained injuries as a result of this impact and died in the hospital. At the time of accident Deepak Gupta was aged about 13 years. He was a student of VIII class of the Government Boys Middle School. He was a brilliant student and also used to participate in extra curricular activities in the School. The bus No. DEP 4674 belonged to Opp. Party No.6- Delhi Tourism Development Corporation and at the relevant time it was insured by Opp.party No.7- New India Assurance company Ltd. The motor Truck No. USE 3028 belonged to Opp.party Nos. 1 to 4 and at the relevant time it was driven by Opp.party No.5- Mohd. Umar and was insured by Opp.party No.8-Oriental Insurance Company Ltd. Smt.Subhash Gupta, mother of deceased, filed claim petition under Section 110-A of the Motor Vehicles Act before the Tribunal for compensation on account of his death.

Opp. Parties contested the case before the Tribunal. On the pleadings of the parties, the following issues were framed by the Tribunal:-

(1) *Whether the accident in question occurred on account of negligence on the part of the driver of truck No. USE 3028 or on account of negligence on the part of the driver of Bus No.DEP 4674?*

(2) *Whether the claimant is entitled to compensation frosm the owners and Insurance Companies of both the motor truck and the motor bus and if so, in what proportion?*

(3) *Whether the accident was caused on account of negligence on the part of drivers of motor truck and the bus, if so, whether the amount of compensation can be apportioned in between vehicles?*

(4) *To what amount ov compensation, if any, is the claimant entitled?*

(5) *Whether the claimant is entitled to interest, if so, at what rate?*

The Tribunal decided all the issues in favour of the claimants and by impugned order, awarded the claim petition for Rs. 2,17,000/- alongwith interest at the rate of 12% per annum from the date of petition till the date of payment against the registered owners of the offending vehicle and Oriental Insurance Company Ltd.

The appellant Insurance Company challenged the impugned award only on the point that there was contributory negligence of the drivers of both the vehicles and the Tribunal has erred in holding the liability to pay the amount of compensation by the Oriental Insurance Company with whom the offending Truck No.USE 3028

was insured. The Tribunal while deciding issues after recording the evidence, oral and documentary, has held that accident was caused due to negligence in driving on the part of the driver of the Motor truck No. USE 3028 and that there was no negligence on the part of the driver of bus No. DEP 4674.

We have gone through the entire material on record and perused the impugned judgment. We do not find any infirmity or illegality in the impugned order on the basis of evidence on record in determining the compensation payable to the claimant.

It was further contended by the learned counsel for the Insurance Company that the liability of the appellant-Insurance Company was Rs.1,50,000/- as maximum under the Act and the Tribunal has committed a mistake in not specifying the same. In view of the grounds taken by the Insurance Company we provide that the Insurance Company must first satisfy the award before the learned Tribunal and then can file its objection for bifurcation of the amount of award between the owners of the offending motor truck and Insurance Company in accordance with the provisions of the old Act.

The appeals filed by the registered owners of the offending motor truck no. USE 3028 and the Oriental Insurance Company Ltd., with whom the said motor truck was insured, have no force and are liable to be dismissed.

Both these appeals are dismissed. The order dated 12.09.1988 passed by the Tribunal is affirmed. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh